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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 JANE DOE,

Case No. 2:16-cv-01696-JAD-PAL

8 Plaintiff,

ORDER

9 v.

(Mot Dist – ECF No. 59)

10 CLARK COUNTY SCHOOL DISTRICT,

11 Defendant.

12 Before the court is Plaintiff's Verified Petition Establishing Reasonableness of the
13 Proposed Settlement and Proposed Distribution of Settlement Proceeds (ECF No. 59) filed
14 September 26, 2018.

15 **BACKGROUND**

16 The plaintiff is the mother of a minor child, Joann Doe, who alleges her daughter was
17 assaulted when she was thirteen years old and enrolled at Jerome D. Mack Middle School as a
18 special-education student. Joann has severe autism and the intellectual, mental, and emotional
19 capacity of a five-year-old child. As part of its special-education curriculum, Mack teaches general
20 life and household skills. These skills are taught in a hallway-like laundry room situated between
21 two other classrooms with a door on either side, a washer and dryer, and a bathroom. The doors
22 on either side have no windows, no locks, and will swing shut automatically unless propped open.

23 On May 10, 2016, defendant Fausto Barraza-Balcazar ("Barraza"), a special education
24 teaching aide, took Joann and another female student into the laundry room to rotate the laundry
25 from the washing machine to the dryer. While the other student went to the bathroom, Barraza
26 positioned Joann up against the laundry appliances and pressed his body, from chest to thigh,
27 against her backside. Joann's teacher, Natasha Thompson, walked into the laundry room and saw
28 the profile of Barraza pressed up against Joann. Joann then ran into the bathroom. Thompson

1 reported the incident that afternoon. Barraza was suspended the next day and terminated after an
2 investigation. The Clark County District Attorney's Office charged Barraza with four counts of
3 lewdness with a child under the age of fourteen. Three of these charges were for incidents
4 involving Joann, and the other for an incident involving another female student. Barraza
5 eventually pled guilty to one count of attempted lewdness with a child under the age of fourteen.

6 After the close of discovery, CCSD moved for summary judgment on the majority of the
7 claims. The plaintiff abandoned several of the claims, except those for negligence/negligent
8 supervision; negligent infliction of emotional distress; and a *Monell*-based civil rights claim under
9 42 U.S.C. § 1983. In an Order (ECF No. 46) entered March 15, 2018, the district judge granted
10 summary judgment in favor of CCSD on plaintiff's § 1983 and negligent infliction of emotional
11 distress claims but denied the motion for summary judgment on the negligence/negligent
12 supervision claim. She found that there was a material issue of fact concerning whether CCSD
13 breached its duty of care by permitting the aide to be alone with students after the aide received a
14 a prior reprimand for touching a student.

15 The district judge referred the matter to the undersigned to conduct a settlement conference.
16 At a settlement conference conducted on May 30, 2018, a settlement was reached under essential
17 terms memorialized in Minutes of Proceedings (ECF No. 54). A follow up telephonic status
18 conference was set for June 21, 2018, at 11:00 a.m. At the status conference, counsel for the
19 parties advised the court that the agreements had been drafted. However, plaintiff's counsel was
20 still waiting to hear from Medicaid to determine whether it had an outstanding lien. Plaintiff
21 subsequently filed a motion for compromise of minor's claim after confirming that Medicaid had
22 not asserted a lien. All the settlement and release documents have been executed, and plaintiff
23 sought approval from the court to compromise the claim of the minor plaintiff. However, the
24 motion was not supported by a memorandum of points and authorities and as explained in the
25 Order, (ECF No. 58), the motion was denied without prejudice to allow plaintiff and counsel for
26 plaintiff to file a verified petition. The order addressed the standard for approval of a verified
27 petition and required counsel for plaintiff to file a verified petition establishing the reasonableness
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1 of the proposed settlement and proposed distribution of settlement proceeds. The order directed
2 that the verified petition must attach:

- 3 1. A copy of the executed settlement agreement;
- 4 2. A copy of any written fee agreement between plaintiff and counsel for plaintiff for
5 attorney's fees and costs,
- 6 3. An itemization with supporting documentation for costs disbursed by counsel for
7 plaintiff in the prosecution of this case for which reimbursement from settlement
8 proceeds was sought; and
- 9 4. An affidavit of counsel responsible for the billings in the case authenticating the
10 information contained in the verified petition and confirming the itemization of costs
11 was reviewed and the costs were reasonable and necessary for the prosecution of this
12 case.

13 The court has now reviewed the verified petition and supporting exhibits and declarations
14 and finds that plaintiff has established the reasonableness of the proposed settlement and proposed
15 distribution of settlement proceeds. The court finds that the settlement and distribution of
16 settlement proceeds serves the best interests of the minor child. The net recovery to the minor
17 child is fair and reasonable under the totality of the circumstances for the reasons explained below.

18 This was a difficult case to prosecute. An employee of the school district pled guilty to
19 lewdness with a child under the age of fourteen involving the minor child. The minor child is
20 unable to communicate what happened. There are substantial factual and legal disputes for the jury
21 concerning whether CCSD is liable for its employee's conduct. After the close of discovery, the
22 parties filed motions for summary judgment. The school district sought summary judgment on all
23 of plaintiff's claims. Plaintiff abandoned several of her claims, except for those based on
24 negligence, negligent supervision, negligent infliction of emotional distress, and a *Monell*-based
25 civil rights claim under 42 U.S.C. § 1983. On March 15, 2018, the district judge granted summary
26 judgment in favor of CCSD on plaintiff's § 1983 and negligent infliction of emotional distress
27 claims. The only claims which remained against CCSD were plaintiff's claim for negligence and
28 negligent supervision. These are state law claims which are subject to a statutory cap on liability

1 and claims for which plaintiff may not recover attorneys' fees. Additionally, the district judge
2 found that there was a material issue of fact concerning whether CCSD breached a duty of care by
3 permitting the aide to be alone with students after a prior reprimand for touching a student.
4 However, that prior reprimand was remote in time and not related to a claim of inappropriate sexual
5 contact that plaintiff raised in this case.

6 Counsel for plaintiff incurred substantial attorney's fees and costs in prosecuting this case.
7 The plaintiff and her counsel have a written fee agreement which provides for a 40% contingency
8 fee on any recovery after costs. To facilitate settlement plaintiff's counsel agreed to waive all fees
9 and seeks only to recover actual costs incurred in the prosecution of this case. The bulk of those
10 costs consist of expert witness fees necessary to prosecute a case of this nature. The remaining
11 costs consist of court reporting fees and investigative fees related to witness location. Very minor
12 sums were incurred for runner services, court filing fees, deposition subpoena fees, medical
13 records request fees, postage, and shipping costs.

14 Following the settlement conference, the parties agreed to settle with CCSD paying Joann
15 Doe \$50,000 in return for a broad release of all claims through the date of the release. Plaintiff
16 was required to provide her Medicare/Medicaid affidavit with respect to any medical bills alleged
17 as damages arising out of this case. The parties agreed to stipulate to dismiss this case with
18 prejudice with each side responsible for their own attorney's fees and costs. Of the \$50,000 in
19 settlement, plaintiff's counsel waived all attorney's fees. Plaintiff's counsel seeks only to recover
20 hard costs in the amount of \$44,602.52, with \$5,953.21 being distributed to the plaintiff to be
21 deposited in a blocked account on behalf of the minor child.

22 In assessing the reasonableness of the settlement and proposed compromise of the minor's
23 claim, the court recognizes that less than \$6,000 will be deposited in a blocked account on behalf
24 of the minor child. However, after CCSD's motion for summary judgment was decided, the only
25 claims that survived summary judgment were claims for which CCSD was entitled to a statutory
26 damages cap of \$50,000. The most plaintiff had any possibility of recovering is \$100,000 if the
27 district judge found that plaintiff's negligence and negligent supervision claim were separate
28 claims for which a \$50,000 per claim cap applied. To prosecute her case at trial plaintiff would

1 have incurred substantial additional expert fees and costs running the risk that her costs would
2 exceed her recovery if she prevailed.

3 The court has reviewed the parties' executed settlement agreement and release of all claims
4 and finds that the agreement contains usual and customary terms for a case of this nature. The
5 court has also reviewed the written contingency fee agreement attached as Exhibit B to the motion.
6 The terms of the agreement entered into on May 10, 2016 provided that the law firm agreed to
7 accept the case on a contingency fee in the amount of 33.333% of the gross proceeds of any
8 amounts recovered before suit. The parties agreed that upon filing the complaint or
9 commencement of arbitration, the contingency fee increase to 40% of gross recovery. If plaintiff
10 received no recovery or lost her case, no attorney's fees would be owed. The written contingency
11 fee agreement also contained detailed provisions regarding costs of the case which would be
12 deducted after attorney's fees are calculated and limited in accordance with the provisions of NRS
13 18.005.

14 The contingency fee agreement provided that "reasonable fees of not more than five expert
15 witnesses in an amount of not more than \$1,500 for each witness" would be deducted from the
16 client's recovery "unless the court allows a larger fee after determining that the circumstances
17 surrounding the expert's testimony were of such a necessity as to require the larger fee." This
18 provision applies to fees for testimony at trial. In this case, plaintiff's counsel incurred substantial
19 costs in retaining expert witnesses. Written retainer agreements and expert agreements were
20 executed memorializing the terms of the agreement and the scope of services, as well as the cost
21 per hour to be charged. Plaintiff's counsel retained a licensed psychologist and PhD, a forensic
22 expert retained to provide an expert report and opinions regarding compliance and non-compliance
23 with standards of care in terms of appropriate supervision of students, student safety, staff
24 selection, staff training, staff supervision, staff evaluation, policies and procedures, students' rights
25 under 42 U.S.C. § 1983 in compliance with Title IX of the Education Amendments Act of 1972.
26 The court has reviewed the affidavit of counsel and supporting invoices and finds that the fees and
27 costs charged to prosecute the plaintiff's claims were within the range of what is reasonable in
28 this locality.

1 Having reviewed and considered the matter,

2 **IT IS ORDERED** that:

- 3 1. Plaintiff's Verified Petition to Establish the Reasonableness of a Proposed Settlement
4 and Proposed Distribution of Settlement Proceeds (ECF No. 59) is **GRANTED**.
- 5 2. Of the \$50,000 settlement reached with CCSD, counsel for plaintiff may distribute
6 \$44,602.52 to pay itemized costs as set forth in the verified petition.
- 7 3. Of the remaining settlement proceeds, \$5,397.48 shall be placed in a blocked trust
8 account until the minor child reaches the age of 18. Funds placed in the blocked
9 account may only be released by further order of the court. An order to release
10 settlement proceeds deposited on behalf of the minor child may only be obtained upon
11 application to this court, and after a final accounting and verification that the minor
12 child has reached the age of 18.
- 13 4. Plaintiff shall have until **November 15, 2018**, in which to provide proof of the
14 establishment of a blocked trust account containing the net settlement proceeds as
15 ordered.

16 DATED this 16th day of October 2018.

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19 PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE

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